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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 444 of 1981

with

SECOND APPEAL No 445 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

JAGJIVAN PARSHOTTAM

Appearance:

1. Second Appeal No. 444 of 1981
MR BIPIN I MEHTA for appellant
MS MITA R TALREJA for respondent
 2. Second Appeal No. 445 of 1981
MR BIPIN I MEHTA for appellant
MS MITA R TALREJA for respondent
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Date of decision: 23/10/2001

COMMON C.A.V. JUDGMENT

Second Appeal Nos.444 of 1981 and 445 of 1981 are preferred against the common judgment and order dated 27-3-1981 rendered by the learned District Judge, Jamnagar in Regular Civil Appeal Nos.78 of 1980 and 130 of 1979 whereby the learned Judge, while allowing Regular Civil Appeal No.78 of 1980 and dismissing Regular Civil Appeal No.130 of 1979, modified the judgment and decree rendered by the learned Jt.Civil Judge (S.D.), Jamnagar in Civil Suit No.745 of 1980 preferred by the original plaintiff and declared that the services of the plaintiff were illegally terminated and he was declared to be in continuous employment and hence entitled to full pay and emoluments.

2. The facts in short are that the present respondent-original plaintiff was in the services as Majdoor from 25-6-1968 to 12-10-1972 with certain breaks in the office of Garrison Engineer at Jamnagar. Since his services were verbally terminated with effect from 12-10-1972 considering him to be overage, he preferred a suit being Regular Civil Suit No.745 of 1980. The learned Jt. Civil Judge (S.D.), Jamnagar vide judgment and order dated 31-7-1979 passed the following order:

"The plaintiff's suit is partly allowed.
The plaintiff is entitled to damages for the period from 12-10-1972 to 31-12-1973 at the rate of Rs.149-80 Nps. P.M.

The plaintiff do recover Rs.2192/-(Rupees
Two Thousand One Hundred Ninetytwo only) from the defendant.

The rest of the reliefs so far as
reinstatement in service and amount as claimed
are concerned, are negatived.

Each party shall bear its own cost of
this suit in exercise of due discretion.

The decree to be drawn accordingly."

2.1 Being aggrieved by the above judgment and decree, both the parties preferred appeals before the District Court at Jamnagar. The appeal preferred by the original plaintiff was numbered as Regular Civil Appeal No.78 of 1980 whereas appeal preferred by the original defendant was numbered as Regular Civil Appeal No.130 of 1979. The learned District Judge vide common judgment and order dated 27-3-1981 passed the following order:

"The Regular Civil Appeal No.78 of 1980 succeeds and the same is hereby allowed.

The judgment and the decree as pronounced by the learned trial Judge are modified and the suit of the plaintiff worker is hereby further decreed for the relief of declaration and it is hereby declared and ordered that the services of the plaintiff worker were illegally terminated and that he continues on his post and that he is entitled to the full pay and the emoluments.

The judgment and the decree under appeal shall stand modified accordingly.

The employer defendant shall bear the cost of the suit and of the appeals."

2.2 Being aggrieved by the aforesaid judgment and order, both these Second Appeals have been preferred.

2.3 During the pendency of these appeals, original plaintiff i.e. the present respondent has been reinstated into the services and he has been paid arrears of salary etc. and he is continuing in the services. Thereafter, original plaintiff was confirmed in the services and was being promoted in usual course. Now his grievance is only regarding non-inclusion of his past services.

3. Heard Mr.B.I.Mehta and Ms.Mita R. Talreja, learned counsel appearing for the respective parties.

4. Scope of Sec.100 of Civil Procedure Code and power of the High Court while exercising jurisdiction as a Second Appellate Court are by now well demarcated and settled by way of the judgement of Apex Court rendered in

Ramaswamy Kalingaryar V. Mathayan Padayachi, AIR 1992 Supp.(1) SCC 712 wherein the Apex Court clearly reiterated the principle that High Court cannot upset the finding of fact recorded by the Lower Appellate Court by reasoning the evidence or reassessing the qualitative value of such evidence on record and thus, cannot reverse the finding of facts under Sec.100 of C.P.C. In fact, the High Court cannot interfere with such finding of fact even by examining or reappreciating the evidence from the aspect of sufficiency of proof. Keeping in mind the above aspect of the matter, I proceed further in the matter.

5. Learned counsel for the respective parties have taken me through the reasoned judgments and orders passed by both the Courts i.e. the Trial Court and Lower Appellate Court. It is established from the same as well as from the record and proceedings that various appointment orders were being issued by the appellant and it appears that the respondent had been engaged continuously as a Majdoor from 25-6-1968 to 12-10-1972 by passing various appointment orders (for 89 days) by showing artificial breaks. However, facts remain that the respondent was in continuous employment and, therefore, the manner in which the appointment orders were being issued is arbitrary and even the verbal order of termination contending the respondent to be overage is also arbitrary. Hence, Court below has rightly reinstated him with full back wages. Lower Appellate Court has relied upon various judgments and it is not necessary to repeat the same at this stage. Reliance is placed on the unreported judgment of this Court in the case of Ghanshyam M.Pandya Vs. State of Gujarat, 1985 G.L.H. (U.J.) 51. No other convincing legal submissions were made by the learned counsel for the appellant. The point which the learned counsel for the appellant has tried to advance before this Court is the question of limitation. I am of the view that same has been rightly dealt with by the Trail Court by replying issue No.7 by holding that the suit is not barred by law of limitation and said point has not been taken before the Lower Appellate Court. Hence, I do not deal with the same at this stage.

6. Having regard to the above facts and circumstances of the case, I do not see any reason as to why the order passed by the Courts below treating him to be in continuous service and paying him full benefits requires to be interfered in these Second Appeals.

7. Thus, Second Appeal No.444 of 1981 is dismissed.

The respondent is treated to be in continuous employment of the appellant and he will be entitled to all the benefits.

8. In view of the dismissal of Second Appeal No.444 of 1981, Second Appeal No.445 of 1981, which is filed against granting of consequential benefits, is also dismissed.

(R.P.DHOLAKIA, J.)

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